

SAPOLIN PAINTS INC.  
CORP. TAX DET.  
1975

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of Petition :  
                    of :  
SAPOLIN PAINTS INC. :  
for redetermination of deficiency :  
of franchise tax under Article 9-A :  
of the tax law for 1970. :  
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Sapolin Paints Inc. having filed a petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the calendar year 1970, and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing R. Pepper, vice president of the taxpayer, and J. E. Mullin, Jr., certified public accountant, appeared and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Sapolin Paints Inc. ("Sapolin"), a manufacturer of paints, has been filing returns on a combined basis for a number of years with two of its wholly owned subsidiaries, Woolsey Marine Industries Inc. and Kimberly Chemicals Inc. The latter are dealers in paints and purchase their requirements from Sapolin. In its combined return for 1970, Sapolin included the operations of a newly organized wholly owned subsidiary, Hydraposit Applications Inc. ("Hydraposit"), without receiving prior permission. The Corporation Tax Bureau disallowed the inclusion of Hydraposit in the combined return, and issued a statement of audit adjustment and notice of deficiency against Sapolin in the amount of \$9,978.00 for 1970.

(2) Hydraposit was incorporated in New Jersey on January 15, 1970. It leases paint spraying equipment to franchisees, such as painting contractors, hardware and paint stores, etc. Its gross receipts for 1970 were primarily received from such franchisees in the form of rents and royalties for use of the spraying equipment. There were no intercompany sales between Sapolin and Hydraposit.

(3) Section 211.4 of the Tax Law reads in part:

"in the discretion of the Tax Commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations . . . may be required or permitted to make a combined report covering any other such corporations . . . "

The State Tax Commission hereby

DECIDES:

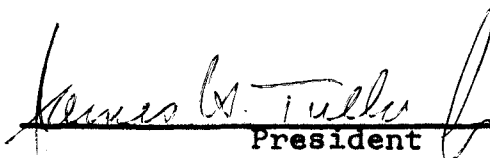
(A) Hydraposit was properly excluded from the combined return, and taxed on an individual basis for 1970, since its net loss for that year was primarily due to its own operations, and not to intercompany transactions. It is the policy of the Tax Commission not to permit or require a combined return where taxation on an individual basis produces a more proper result.

(B) The notice of deficiency as indicated in (1) is affirmed, together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 16th Day of May 1975.

STATE TAX COMMISSION

  
President

  
Commissioner

  
Commissioner